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RECENT IMPORTANT DECISIONS

BOUNDARIES—PROPERTY CONVEYED—HALF OF “LOT”—STREET.—Plaintiff and defendants own, respectively, the easterly and westerly halves of “lot 17” of a certain tract of land. Defendants’ deed described the land conveyed to them as the “westerly one-half of lot 17” of said tract, according to a recorded map, which indicated that the western boundary of lot 17 is the center line of an avenue 60 feet wide. Plaintiff sues to quiet title to a strip of land 15 feet wide adjacent to the center line of said lot. *Held*, that the 30-foot strip covered by the avenue was not part of the lot within the meaning of the deed, and that therefore the eastern boundary of defendants’ land was a line halfway between the eastern boundary of the avenue and the eastern boundary of lot 17. *Earl v. Dutour et al.* (Cal., 1919), 183 Pac. 438.

A basic rule of the law of real property is that with regard to grants of land abutting on a highway the ownership is presumed to extend to the middle of the way if the grantor owns that far, unless a contrary intention appears from the conveyance. *Paul v. Carver*, 26 Pa. St. 223; *Low v. Tibbetts*, 72 Me. 92. And at least one court has gone so far as to hold that nothing short of an intention expressed in *ipsis verbis* to exclude the soil of the highway can exclude it. *Salter v. Jonas*, 39 N. J. Law 469; *Simmons v. City of Paterson*, 84 N. J. Equity 23 (land contiguous to a river). At least the declaration to rebut the legal presumption must be clear. *Oxton v. Groves*, 68 Me. 372. Likewise, if the description is by courses and distances and a line runs, in fact, upon, by, or along a street, although not so described, the language will be construed as carrying the grant to the middle of such street. *Champlin v. Pendleton*, 13 Conn. 23; *Sizer v. Devereux*, 16 Barb. (N. Y.) 160. But in order to have the middle of the highway included, it must actually be used as a public way, and not merely exist as a designation on a plan. *Bangor House Proprietary v. Brown*, 33 Me. 309. Contra, *Jarstadt v. Morgan*, 48 Wis. 245. Judged in the light of these general principles the instant case is sound, it simply presenting a different angle to the problem. The conclusion of the Court, that the term “lot” means “that portion of the platted territory measured and set apart for individual and private use and occupancy,” is good sense as well as good law.

CONTRACTS—RIGHTS OF THIRD PARTY BENEFICIARY.—Husband and wife entered into a contract whereby the husband agreed to make a transfer of certain property for the benefit of an invalid daughter. *Held*, (two justices dissenting) that under 3 Mich. Comp. Laws 1915, § 12361, which provides among other things that “in all equitable actions all persons having an interest in the subject of the action and in obtaining the relief demanded, may join as plaintiffs” the daughter could maintain an equitable proceeding against the father to enforce the contract, although she was not a party thereto. *Preston v. Preston* (Mich., 1919), 205 Mich. 646.

The case is the more remarkable in view of the fact that the Michigan Supreme Court, contrary to the prevailing American doctrine, seems hereto-

fore to have adhered strictly to the orthodox English view that a beneficiary under a contract to which he is not a party has no enforceable interest either legal or equitable. *Knights of the Modern Maccabees v. Sharp* (1910), 163 Mich. 449; *Edwards v. Thoman* (1915), 187 Mich. 361; *In Re Bush's Estate* (1917), 199 Mich. 192. The statute relied upon by the majority opinion as the basis for changing the rule, while first enacted by the legislature as a part of the "Judicature Act of 1915," does not seem to announce a new principle either of substantive or adjective law. It is simply a statement of the generally prevailing equity rule in regard to joinder of parties, and was apparently borrowed from the Federal Equity Rules (No. 37) and from the state Codes of Civil Procedure, of which it is an integral part. POMEROY'S *CODE REMEDIES* (4th ed.) § 111. "It is," in the language of the dissenting opinion in the principal case, "a novel idea that a statute, plainly intended to affect procedure only, may be used to change a settled rule of the law of contracts, to confer upon a person a legal right and interest in subject matter where there was none before the statute was enacted". Especially is this so where the statute is merely declaratory. It is to be hoped that a more satisfactory basis can be found for a result which is undeniably desirable. For a collection of the cases and full discussion of the problem involved see 15 HARVARD L. REV. 767; 27 YALE L. JOUR. 1008.

DAMAGES: MOUSE IN COCA-COLA.—A bottling company sold a bottle containing a mouse as well as the well-known beverage to a retailer, who sold it (or them) to the innocent and unsuspecting female plaintiff. The lady became acutely sick after drinking the concoction and brought suit against the bottling company. *Held*, award of \$500.00 damages was not excessive, there being no evidence "that passion or prejudice operated upon the members of the jury." *Bellingrath v. Anderson* (Ala., 1919), 82 So. 22.

For an exhaustive as well as an interesting discussion of the principles involved in numerous cases of this character, see 17 MICH. LAW REV. 261.

DEEDS—CONDITIONS—REPUGNANCY TO INTEREST CREATED—SALE TO NEGROES.—Plaintiff company, owner of many lots in certain locality, sold one lot to K, under whom defendant, a negro, claims title. The deed to K, duly recorded, provided that if grantee, her heirs or assigns, should lease or sell to any negro, Chinese, or Japanese, title should revert to grantor. This was put in the form of a covenant and expressly stated to run with the land,—to be terminable, if desired by owner, in 1925. *Held*: Such condition in deed of fee simple is within rule of common law, as re-declared in Civil Code of California, § 711, that "conditions restraining alienation, when repugnant to the interest created, are void." *Title Guarantee and Trust Co. v. Garrott*, Dist. Ct. App., 2nd Dist. Cal., 183 Pac. 470.

The deed in full does not appear in the report of this case, nor was it set forth in the complaint, the court assuming from briefs of counsel that a title in fee simple absolute was conveyed thereby, and proceeding on that basis. The plaintiff's contention was this clause in the deed created a condition subsequent and that, by its violation, the fee was forfeited and the plaintiff is en-